

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 537/CHD/2022

निर्धारण वर्ष / Assessment Year. : 2015-16

Saiurja Hydel Projects Pvt. Ltd., Sai Bhawan, Sector 4, New Shimla.	बनाम VS	The ACIT, Circle, Shimla.
स्थायी लेखा सं./PAN /TAN No: AAKCS3547F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vishal Mohan, Sr.Advocate with
Shri Aditya Sood, Advocate

राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

तारीख/Date of Hearing : 15.04.2024

उद्घोषणा की तारीख/Date of Pronouncement : 03.05.2024

HYBRID HEARING

आदेश/ORDER

PER A.D.JAIN, VICE PRESIDENT

This is assessee's appeal for assessment year 2015-16 against the order dated 22.04.2022 passed by the Id. Commissioner of Income Tax (Appeals) NFAC, Delhi [in short 'the CIT(A)].

2. The appeal is barred by limitation by ten days and the assessee has filed an application for condonation of ten days' delay in filing the appeal before this Tribunal. It is submitted in the application that the impugned order was passed by the Id.

CIT(A) on 22.04.2022 and the last date of limitation for filing the appeal expired on 21.06.2022. It is further submitted in the application that the impugned order was uploaded on the official website of the assessee on 22.04.2022 and the assessee did not look into the website. The assessee came to know about passing of the order on 26.06.2022 and thereafter, the assessee took immediate steps to file the appeal and in the process, a delay of ten days occurred. The assessee has requested to condone the delay as it was neither willful nor unintentional.

3. From the contents of the application, we find that the assessee was prevented by sufficient cause from filing the appeal before this Tribunal within the stipulated time. Even otherwise, the assessee cannot be said to stand to gain anything by deliberately delaying the filing of the appeal. Therefore, the delay is condoned.

4. The assessee has raised the following grounds of appeal :

1. That in the facts and circumstances of the case the Ld Commissioner of Income Tax Appeal is not justified in holding that the order passed by the Td Assessing Officer on the application filed under section 154 by the appellant assessee was not an appealable order as per law.

2. That in the facts and circumstances of the case the authorities below are not justified in holding that addition in respect of the depreciation as per the Companies Act and the Income Tax Act had to be added back for computation of Income for levy of MAT under section 115JB of the Income Tax Act, 1961 .

3. That the order of the Ld Assessing Officer is bad in law and facts .

5. At the outset, the ld. Counsel for the assessee has stated at the Bar that it does not wish to press Ground No.1. Rejected as not pressed.

6. Apropos Ground Nos. 2 to 3, the facts are that assessment u/s 143(3) of the Income Tax Act, 1961 was completed on 03.09.2017, determining the income of the assessee at Rs.7,01,47,629/- u/s 115JB of the Act. The assessee filed a rectification application on 10.11.2017. The same was disposed of vide order dated 06.04.2018, rejecting the request for rectification of the assessee. The assessee preferred the appeal against the rectification order dated 06.04.2018 before the ld. CIT(A). By virtue of the impugned order, the ld. CIT(A) has dismissed the appeal of the assessee. This brings the assessee in further appeal before us.

7. The ld. Counsel for the assessee has contended that the ld. CIT(A) has erred in holding that the order passed by the Assessing Officer (in short 'the AO') on the rectification application filed by the assessee was not an appealable order and that the addition in respect of the depreciation as per the Companies Act and the Income Tax Act had to be added back for computation of income for levy of MAT u/s 115JB of the Income Tax Act.

8. The Id. DR, on the other hand, has placed strong reliance on the impugned order.

9. It is seen that the application for rectification was rejected by the AO vide order dated 06.04.2018 passed u/s 154 of the Income Tax Act rejecting the request for rectification of the assessment order. For ready reference, the order dated 06.04.2018 (APB 64) is reproduced hereunder :

Order under section 154 of the Income Tax Act 1961

In this case, on selection for scrutiny, assessment u/s 143(3) of the Act was completed on 03-09-2017 by determining income u/s 115JB of the Act at Rs. 7,01,47,629/-.

2. The assessee, through application dated 10-11-2017 u/s 154 of the Act has contended for rectification of mistake as under:

.....With reference to our order passed u/s 143(3) of the Income Tax 1961 dated 03-10-2017 wherein a demand of Rs. 1,02,94,870/- has been raised, we are to submit that there is mistake apparent from record.

As per the Income Tax computation form as Sr No 17 deemed income u/s 115JC has been computed at Rs. 2,80,13,107/- which is a fallacy as AMT is not applicable as the assessee is a private limited company.

Further, there is mistake in computation of Book Profit u/s 115JB. The fixed asset schedule as per Companies Act and as per Income Tax Act is enclosed. In case of any further clarification please do let us know.....'

3. From a perusal of the application u/s 154 of the Act made by the assessee, it is observed that the application is cryptic, as the same does not spell out what kind of mistake is apparent from the records, which required to be rectified.

4. The assessee was given an opportunity of being heard vide this office letter dated 28-02-2018, to clarify its position in connection with the application made u/s 154 of the Act. However, till date no response is received from the assessee's side. Therefore, in this case as from the application u/s 154 of the Act filed by the assessee, it is not clear what kind of mistake is apparent from the records, and also in view of non compliance of the assessee to this office opportunity letter dated 28-02-2018, the application u/s 154 of the Act filed by the assessee is hereby rejected.

Dated: 06-04-2018

✓ Copy to the assessee.

[Signature]
A.C.I.T.

(सुखदेव सिंह मांगट)
सहायक आयकर आयुक्त
सर्कल शिमला

A T C
[Signature]
RITU MOHAN

9.1 It appears vide letter dated 07.02.2020 that the AO intimated to the assessee that order u/s 154 of the Act stood passed on 06.04.2018 and that a copy of the same had been handed over to Shri Narender Gupta, Account Officer/AR. For ready reference, the said letter dated 07.02.2020 is reproduced hereunder for ready reference :

No. ACTT/Circle/Shimla/ 2019-20/ 544 **PH/FAX : 0177-2656204/2656203**
Office of the
Asstt. Commissioner of Income Tax,
Circle, Railway Board Building,
The Mall, Shimla - 171 003
Dated: 07.02.2020

To

M/s. Saiurja Hydel Projects Pvt.Ltd.
Sai Bhawan, Sector -4,
New Shimla - 171009
(H.P.)
Shimla

Sir,

Subject: Application u/s 154 of the Income Tax Act, 1961, Matter-Reg.

Please refer to your letter no. SHPPL/SML/2019-20 dated 14.11.2019 u/s 154 of the Income Tax Act, 1961 requesting for rectification of order for A.Y. 2015-16 which was submitted in response to the notice issued u/s 221(1) dated 30.10.2019.

2. In this regard, your rectification application dated 10.11.2017 has already been decided vide order dated 06.04.2018. A copy of the said order was handed over to Sh. Narender Gupta, Account officer, being Authorised Representative (a copy of the said order dated 06.04.2017 is enclosed).

3. In view of the above, you requested to submit the outstanding demand of Rs. 1,02,94,870/- with immediate effect. Notice u/s 221(1) of the Income Tax Act, 1961 has already been issued to you.

Encl: As above



(Battilal Meena)
Asstt. Commissioner of Income Tax
Circle, Shimla

Certified to be true copy
Vis: [Signature]
(Advocate)

9.2 It is seen that the aforesaid letter dated 07.02.2020 encloses with it, as mentioned in para 2 of the letter, a copy of the said order dated 06.04.2018.

9.3 The assessee, rather than challenging the order dated 06.04.2017 passed u/s 154 of the Act, for reasons best known to it, went in appeal before the ld. CIT(A) against the aforesaid letter dated 07.02.2020, whereby, only an intimation was conveyed to the assessee that the assessee's rectification application had already been decided vide order dated 06.04.2018.

10. In this background of the matter, we do not find any error with the order of the ld. CIT(A), whereby the ld. CIT(A) has correctly observed as follows :

“After consideration of all documents furnished and the sequence of events, I find that the appellant has filed the present appeal against a letter intimating the appellant that that rectification order has already been passed and AO made a request to pay the outstanding demand as the notice u/s 221(1) of the Act has already been issued to the appellant. Thus, the letter issued by the AO on 07.02.2020 is a letter, which is not an appealable order u/s 246A of the IT. Act. In fact, the appellant in its form No. 35 has wrongly depicted the order appealed against as Order u/s 154 of the Act dated 07.02.2020. Since the appellant has not filed the appeal against an order, which is an appealable order u/s 246A of the Act before the CIT(A), the present appeal is infructuous in nature and hence the same is dismissed.”

11. The ld. Counsel for the assessee has not been able to demonstrate that the letter appealed against before the ld.

CIT(A), i.e., letter dated 07.02.2020 was an appealable order u/s 246A of the Act. Section 246A is a specific provision containing the list of orders which are appealable before the Commissioner (Appeals). It has not been shown that the letter dated 07.02.2020 comprised an appealable order under the provisions of Section 246A of the Act.

12. In view of the above, finding no error, whatsoever therein, the findings recorded by the ld. CIT(A) in the impugned order are confirmed. The grievance sought to be raised by the assessee is found to be shorn of merit. It is rejected as such.

13. In the result, the appeal is dismissed.

Order pronounced on 03.05.2024.

Sd/-

**(KRINWANT SAHAY)
ACCOUNTANTMEMBER**

Sd/-

**(A.D.JAIN)
VICE PRESIDENT**

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar